

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBRA L. HUTCHENS

Claimant

VS.

THE VYNE AT CRESTVIEW

Respondent

AND

ALLIED MUTUAL INSURANCE CO.

Insurance Carrier

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Docket No. 219,862

ORDER

Respondent and its insurance carrier appealed the September 9, 2003 Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on January 6, 2004.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared on behalf of claimant. Jerry M. Ward of Great Bend, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. The record also includes the November 12, 2002 motion hearing transcript and the March 26, 2003 motion hearing transcript. At oral argument to the Board, the parties stated they were not appealing the Judge's finding of claimant's average weekly wage. Accordingly, for purposes of this claim claimant's pre-injury average weekly wage equals \$785.85.

ISSUES

On December 31, 1996, claimant was allegedly beaten by a coworker. Respondent and its insurance carrier stipulate that a physical confrontation occurred between claimant and a coworker on the date alleged, but they deny claimant was beaten. The parties also stipulate the incident arose out of and in the course of claimant's employment with respondent.

In the September 9, 2003 Award, Judge Barnes determined claimant had sustained both physical and psychological injuries due to the December 31, 1996 confrontation. The Judge awarded claimant a 60 percent permanent partial general disability based upon a whole body functional impairment rating. The Judge also awarded claimant 234.57 weeks of temporary total disability benefits after finding claimant was entitled to receive temporary total disability benefits until she moved to Texas in August 2001 and began working part-time for her husband.

Judge Barnes also determined the December 1996 incident caused post-traumatic stress disorder, which, in turn, led to a March 1999 attempted suicide. Consequently, the Judge ordered respondent and its insurance carrier to pay the medical expenses arising from the attempted suicide.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant failed to prove she sustained any permanent mental disorder as a result of the December 1996 confrontation and her whole body functional impairment for physical injury does not exceed five percent. Accordingly, they request the Board to reduce claimant's permanent partial general disability from 60 percent to five percent. Respondent and its insurance carrier also argue claimant is entitled to receive only 77 weeks of temporary total disability benefits for the period from February 1, 1997, through July 24, 1998.¹

Finally, respondent and its insurance carrier contend they should not be responsible for the medical bills associated with claimant's suicide attempt. They argue the suicide attempt was not related to the December 1996 confrontation. In the alternative, they argue their liability should be limited to the \$500 maximum for unauthorized medical services because the bills were incurred without their authorization or approval.

Conversely, claimant contends she is unable to engage in substantial and gainful employment and, therefore, she should be granted permanent total disability benefits. Claimant also argues respondent and its insurance carrier unilaterally terminated her psychological treatment and, therefore, she was never released from that treatment. Accordingly, in her brief to this Board claimant argues she is entitled to receive temporary total disability benefits through September 11, 2002, which is the date the parties appeared at the regular hearing.² Finally, claimant argues respondent and its insurance carrier are responsible for the bills related to the March 1999 suicide attempt as there is a direct link or chain-of-causation between the suicide attempt and the December 1996 attack.

¹ That is the day before Mitchel A. Woltersdorf, Ph.D., issued a report in which he rated claimant as having a 20 to 50 percent whole body functional impairment due to post-traumatic stress disorder and aggravated dysthymia.

² But at page 6 of the September 11, 2002 regular hearing, claimant's attorney stated temporary total disability benefits should be awarded through March 20, 2002.

The issues before the Board on this appeal are:

1. What is the nature and extent of claimant's injury and disability?
2. How many weeks of temporary total disability benefits is claimant entitled to receive?
3. Does the record establish a chain-of-causation or a direct link between the March 1999 attempted suicide and the December 31, 1996 confrontation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant is a nurse. Respondent, which operates a nursing facility, hired claimant in October 1996 as its director of nursing services. On December 31, 1996, only claimant, three residents and a coworker were in the nursing facility. On that date, the coworker, whom respondent was terminating, confronted claimant. According to claimant, the coworker struck her in the mouth with his fist, threw her onto the floor and kicked her around the office. Once claimant was able to get away from the coworker, she telephoned the police.

Shortly after the confrontation, claimant sought medical treatment at a nearby hospital. The hospital's emergency room records show claimant walked in with a swollen and scratched upper lip, scratches on her left leg, red marks on her back and that she was complaining of hurting all over from being kicked. The emergency room treated claimant and she returned to work.

Claimant worked for approximately one week after the accident until she decided she could not continue. Claimant received treatment for her injuries, including treatment for post-traumatic stress disorder and depression. On May 16, 1997, claimant underwent an MRI that showed a disc protrusion between the fifth and sixth cervical vertebrae (C5-6).

At her attorney's request, in August 1997 claimant saw Dr. Pedro A. Murati for an evaluation. By that time claimant had seen a Dr. Lewonowski, Dr. Jane Drazek, Dr. Mark Vin Zant and Nancy Milner, Ph.D. As a result of the August 1997 examination, Dr. Murati diagnosed a herniated disc in claimant's neck, lumbosacral strain with possible radiculopathy, thoracic strain and myofascial pain syndrome affecting the cervical spine and bilateral shoulder girdles. From a physical standpoint, Dr. Murati believed claimant could perform sedentary activities but deferred to Dr. Milner regarding claimant's psychological condition.

In September 1997, claimant saw orthopedic surgeon Dr. Bernard T. Poole. According to Dr. Poole, at that time claimant was complaining of, among other things, low back pain, occasional sharp pain down the back of the right leg, and pain and stiffness in the neck. The doctor also concluded claimant had major psychological problems that needed to be evaluated.

Due to claimant's apparent psychological problems, on October 9, 1997, Judge Barnes authorized claimant to be evaluated by psychologist Mitchel A. Woltersdorf, Ph.D. The doctor's November 17, 1997 report indicated claimant was clearly anxious and cried easily when talking about the December 1996 confrontation. After testing claimant, Dr. Woltersdorf concluded claimant had post-traumatic stress disorder, significant depression, mild traumatic injury to the right side of the brain and a dependent personality style. The doctor recommended a change in medications, reevaluation in six months, changing claimant's psychotherapist to a male and additional tests after three or four months to determine the efficacy of the newly recommended medications.

In February 1998, claimant began seeing a different psychotherapist, Thomas M. Ruby, Ph.D. Dr. Ruby treated claimant through March 2000, seeing her 40 times during 1998, 39 times during 1999 and five times in 2000. The doctor diagnosed claimant as having post-traumatic stress disorder and alcohol dependency problems. And he also suspected claimant had a bipolar disorder.

On July 2, 1998, claimant returned to Dr. Murati for further evaluation. At that visit, claimant told the doctor she had been in a June 1, 1998 automobile accident in which she was struck on the left side of her head, left shoulder and left elbow. Claimant told the doctor that her car was rear-ended by another vehicle that was going 45 miles per hour.

Dr. Murati attempted to separate the injuries that claimant sustained in the December 1996 confrontation from the injuries she sustained in the automobile accident. Consequently, the doctor only rated claimant's neck and low back, which he rated using the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.). According to Dr. Murati, claimant has a 15 percent whole body functional impairment for a cervical strain with a herniated disc at C5-6 and a five percent whole body functional impairment for a lumbosacral strain, which combine for a 19 percent whole body functional impairment. Dr. Murati did not rate the myofascial pain syndrome that he found in claimant's shoulder girdles as he believed that had been aggravated in the automobile accident.

As a result of the neck and low back injuries that the doctor believed claimant sustained in the December 1996 confrontation, Dr. Murati restricted claimant to occasional bending, climbing stairs and ladders, squatting, crawling and driving; from repetitively using foot controls, constant sitting, standing and walking; to lifting, carrying, pushing and pulling no more than 20 pounds on an occasional basis, 10 pounds on a frequent basis and five

pounds on a constant basis; from working more than 18 inches away from the body and from working with the neck in an awkward position.

Also in July 1998, claimant saw Dr. Woltersdorf for a second time for additional tests. At that time, the doctor concluded claimant's traumatic brain injury had resolved but that she continued to have post-traumatic stress disorder and chronic dysthymia or depression that had been aggravated by the December 1996 assault. The doctor recommended additional psychological assessment for monitoring her condition and a psychiatric evaluation to determine if her medications should be changed. In July 1998, the doctor also concluded it was unlikely that claimant would be able to return to work for respondent and that claimant had a moderate degree of emotional impairment, which would be rated as a class 3 impairment under the *AMA Guides* (4th ed.) and rated as a 20 to 50 percent impairment under the *Guides* (2d ed.).

Respondent and its insurance carrier referred claimant for evaluation by Dr. Michael J. Pronko of Prairie Village, Kansas. Dr. Pronko saw claimant in November 1998 and after testing claimant determined she was terribly depressed and had dependent personality characteristics. The doctor also concluded claimant needed therapy. Dr. Pronko, however, disagreed with Dr. Woltersdorf's diagnosis of mild traumatic brain injury. Dr. Pronko also disagreed with the diagnosis of post-traumatic stress disorder as he did not believe the December 1996 incident was traumatic enough and he did not believe claimant displayed the common signs and symptoms of post-traumatic stress disorder. On the other hand, Dr. Pronko surmised claimant's need for psychological treatment was due to postpartum depression and childcare problems.

In March 1999, claimant made the first of two suicide attempts, which several doctors attributed to the December 1996 confrontation and substance abuse. The summer following the December 1996 confrontation, claimant began drinking, which increased over time. And several months before the March 1999 suicide attempt claimant also began regularly using cocaine. After the suicide attempt, claimant began seeing doctors at ComCare, a community clinic, for alcohol and drug treatment.

On January 3, 2000, the Judge authorized psychiatrist Dr. Elsie Steelberg to evaluate claimant to either recommend treatment or rate claimant if treatment was not indicated. The doctor saw claimant on February 11, 2000, and again on June 19, 2000, at which time claimant had recovered from her second attempted suicide. In an April 2000 report to Judge Barnes, Dr. Steelberg diagnosed chronic post-traumatic stress disorder, dysthymic disorder, anxiety disorder, cocaine and alcohol abuse that was then in remission, post-assault with physical injuries and stress from the December 1996 confrontation that had affected claimant's family relationships, finances and her self-image. Dr. Steelberg found Dr. Pronko's opinion regarding the cause of claimant's symptoms to be incredible.

In August 2001, claimant moved to Texas to be with her husband, who had been sent to Texas by his employer for training in managing a mobile home sales office. Up to that point, claimant had obtained her medication prescriptions from Dr. Vin Zant, her personal physician. Before her move, claimant had also been receiving psychological treatment and substance abuse counseling from ComCare. Since moving to Texas, claimant has not received either psychological or medical treatment.

After moving to Texas, claimant tried working for her husband in the mornings answering the telephone and taking customers from mobile home to mobile home. According to claimant, she experienced pain and exhaustion after working three to four hours for five days. The record is unclear how long claimant attempted that work.

At her attorney's request, in March 2002 claimant saw Robert Schulman, Ph.D., a clinical psychologist in Topeka. At the time of the examination, Dr. Schulman found claimant very stressed, highly emotional and experiencing extreme difficulty in discussing the December 1996 incident. Based upon his evaluation, Dr. Schulman concluded the December 1996 confrontation and injuries caused claimant to experience post-traumatic stress disorder. The doctor also concluded claimant needed additional treatment, including a psychiatrist to prescribe medications and, perhaps, desensitization therapy. The doctor noted the *AMA Guides* refer to different levels of impairment regarding a person's ability to function in social, educational, vocational and household activities. Accordingly, the doctor rated claimant as having a 50 percent functional impairment due to her psychological condition.

Dr. Schulman also concluded claimant could not function full-time in an ordinary vocational setting. Conversely, the doctor believed claimant could function a couple of hours per day in a setting where there was not a lot of interaction with others, limited interaction with the public and a well-defined task where there would not be any question about what needed to be done and the time limits for accomplishing the task. Additionally, the doctor believed claimant might need flexibility regarding her attendance such as being able to come to work late or not at all as her condition remains unpredictable regarding when she might experience a flashback, nightmares or anxiety. Dr. Schulman did not believe claimant would ever be able to return to full-time competitive employment.

At her September 11, 2002 regular hearing, claimant described the pain and symptoms that she was having with her neck, shoulders, low back and right leg, which oftentimes required her to lie down. Claimant was not working and, as a practical matter, had not worked to any extent since January 1997 when she left respondent's employment.

Following the regular hearing, respondent and its insurance carrier requested Dr. Woltersdorf to evaluate claimant for a third time. Accordingly, claimant met with the doctor in March 2003. After interviewing claimant and administering additional tests, Dr.

Woltersdorf concluded claimant “was purposely trying to look more damaged than she actually was and that’s a malingered response.”³ The doctor further explained:

So she’s overreporting to such a degree that’s not consistent with known psychiatric disorders. The thing I have to add, in fairness to Debra, that does not mean by she’s malingering that there is nothing wrong with her. What it means is she didn’t respond in a fashion that allows us to cry help for whatever may be wrong. Where she did do that in ’97 and ’98, she cooperated with the testing process.⁴

Dr. Woltersdorf also determined that claimant’s testing no longer indicated she had post-traumatic stress disorder. At his second deposition in late March 2003, the doctor was not asked to provide his most recent diagnosis of claimant’s condition or provide an opinion regarding her ability to work. Moreover, the doctor did not testify whether he had changed his earlier opinion that claimant had sustained a 20 to 50 percent permanent functional impairment due to her psychological condition.

1. What is the nature and extent of claimant’s injury and disability?

The Board concludes claimant has proven that it is more probably true than not that she is unable to engage in substantial and gainful employment. Therefore, claimant is entitled to receive permanent total disability benefits. The Board is persuaded by the reports and testimonies of Drs. Steelberg, Schulman and Ruby.

The Board concludes claimant sustained a 19 percent whole body functional impairment due to the physical injuries to her neck and low back that she received in the December 1996 attack. The Board adopts that rating as it is the only rating in the record that was derived by utilizing the *AMA Guides* as required by K.S.A. 1996 Supp. 44-510e.

Finally, the Board finds and concludes claimant has sustained between a 20 and 50 percent functional impairment due to her psychological condition, which when combined with the physical impairment creates a functional impairment in the range of 35 to 60 percent. Accordingly, the Board finds and concludes claimant’s functional impairment for both the psychological and physical injuries that she has sustained due to the December 1996 incident is 48 percent.

³ Woltersdorf Depo. (Mar. 31, 2003) at 14.

⁴ *Id.* at 18.

2. How many weeks of temporary total disability benefits is claimant entitled to receive?

The Board finds that claimant is entitled to receive temporary total disability benefits for the period from January 7, 1997, the approximate date that she left work, to July 25, 1998, which is the date that Dr. Woltersdorf provided a permanent functional impairment rating for claimant's psychological condition after seeing her a second time. By July 25, 1998, claimant had received a permanent functional impairment rating from Dr. Murati, whom claimant's attorney selected to evaluate claimant and provide a functional impairment opinion for purposes of this claim. Ostensibly, as of July 25, 1998, claimant's recovery from her physical injuries had reached a plateau and her psychological condition was no longer considered temporary but, instead, capable of being rated.

3. Does the record establish a chain-of-causation or a direct link between the March 1999 attempted suicide and the December 31, 1996 confrontation?

The medical evidence establishes that it is more probably true than not that claimant's March 1999 attempted suicide was directly related to the December 1996 attack. According to Dr. Steelberg, claimant used alcohol and cocaine as tools to decrease her emotional and physical pain, which, in turn, led to an overdose of medications. Dr. Schulman also linked claimant's suicide attempt to the December 1996 attack. According to Dr. Schulman, the attack triggered anxiety, depression, post-traumatic stress disorder, loss of self-esteem and recurrent thoughts. And suicide is a way to escape from those recurrent thoughts. Dr. Schulman also directly linked claimant's substance abuse to the attack as she was trying to use drugs and alcohol to control her psychological condition. Finally, Dr. Ruby testified that he believed claimant used drugs and alcohol to cope with the pain and anxiety she was experiencing from the December 1996 attack. Dr. Ruby described the link between the December 1996 attack and the suicide attempt as a cascade effect. The Board finds the causation opinions of those three doctors persuasive.

Consequently, because there is a direct link between the December 1996 attack, claimant's psychological condition and the March 1999 suicide attempt, respondent and its insurance carrier are responsible for paying the expenses incurred for the medical treatment rendered claimant at that time.

The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above. In addition, the record also establishes that claimant should be receiving psychological and psychiatric treatment. Accordingly, respondent and its insurance carrier are responsible for providing claimant with that ongoing treatment.

AWARD

WHEREFORE, the Board modifies the September 9, 2003 Award by granting claimant permanent total disability benefits, by modifying the period for which claimant is entitled to receive temporary total disability benefits and by awarding claimant ongoing psychological and psychiatric treatment.

Debra L. Hutchens is granted compensation from The Vyne at Crestview and its insurance carrier for a December 31, 1996 injury and resulting disability. Based upon an average weekly wage of \$785.85, Ms. Hutchens is entitled to receive 80.43 weeks of temporary total disability benefits at \$338 per week, or \$27,185.34, plus 289.39 weeks of permanent total disability benefits at \$338 per week, or \$97,814.66, for a permanent total disability and a total award not to exceed \$125,000, which is all due and owing less any amounts previously paid.

Claimant is granted ongoing psychological and psychiatric treatment until further order.

The Board adopts the remaining orders set forth in the September 9, 2003 Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of February 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Jerry M. Ward, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director